

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

In re Paul Topp,

Debtor.

Court File No. 23-30163

Chapter 12

**MOTION FOR SALE OF REAL ESTATE FREE AND CLEAR OF LIENS AND
ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363(f)**

Paul Topp, as Debtor-in-Possession, hereby moves this Court for an order allowing the sale of real property pursuant to 11 U.S.C. § 363 and Fed.R.Bankr.P. 6004.

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 AND 1334. This proceeding is a core proceeding. Debtor filed for Chapter 12 Bankruptcy protection on May 22, 2023 and the case is pending with this Court.
2. The Debtor has determined it's in his best interest to sell a parcel of real property located in Eddy County, North Dakota for the sole purpose of paying down obligations owed to Bank Forward.
3. By a separately filed motion, the Debtor will request expedited relief on this Motion pursuant to 11 U.S.C. §363(b) and (f) as closing on this transaction must be completed as soon as immediately possible. The purchaser, Jessica Carlson, has obtained FSA financing and if the loan is not closed in a timely fashion, the funding for the loan will expire and the application process (of nearly 100 days on this application) will start over, causing great delay of payment to Bank Forward and significant harm to Ms. Carlson and her operation as well.
4. If expedited relief is granted, the Debtor will serve all interested parties with notice of time, date, and place of hearing.

5. Debtor has entered into a sale/purchase agreement with Jessica Carlson for the purchase the following real property, legally described as:

**North 1/2 of Section 24, Township 148 North, Range 64 West
County of Eddy, State of North Dakota.
Parcel Numbers: 03-000-00487-00 and 03-0000-00486-000.
Hereinafter, "Property"**

6. Debtor will provide a copy of the Purchase agreement as soon as immediately possible prior to the hearing as an Exhibit. Attached in Exhibit 3, please find the FSA Approval for Ms. Carlson to purchase the property.
7. The Property is subject to several Promissory notes and a Mortgage held by Bank Forward. All proceeds from this sale, after closing expenses of, will be immediately paid, **in their entirety**, to Bank Forward at closing for application to the Debtor's indebtedness. There are no other lienholders on the Property.
8. Bank Forward, in its Motion to Lift Stay pending with this Court [Doc. 19-8], has indicated the real estate in this case is worth significantly less than what the Debtor has provided in his Schedules. More specifically, the property subject to this sale in the N ½ of Section 24, in Bank Forward's motion in Exhibit 29, this particular Property was evaluated by the bank to be worth \$395,000.00. However, the appraisal provided to FSA in support of Ms. Carlson's purchase agreement with the Debtor indicates the same Property is worth \$600,000.00. See Exhibit 2. This sale is not only in the best interest of the bankruptcy estate, allowing Debtor to pay down debt and increase cash flow to all creditors, but significantly benefits Bank Forward.
9. Counsel handling the closing for FSA has requested abstracts, currently held by Bank Forward, to obtain a title opinion on the Property. As of the time of this writing, Bank Forward has not provided the abstracts to the closing agent. Undersigned counsel has requested the abstracts from counsel for Bank Forward but was advised Mr. Olson is out of the office until next

week. Therefore, Debtor hereby requests the abstracts to be delivered to the closing agent/counsel as part of this expedited motion.

10. A Debtor-in-Possession may sell property of the estate free and clear of liens pursuant to 11 U.S.C. § 363 (f)(1), (f)(3), and (f)(5). In this case, this property will pay \$600,000 to Bank Forward, where they expected \$395,000.00 of value.
 - a. The remaining real estate more than secures the estimated remaining 2.5M of indebtedness owed to Bank Forward after application of proceeds from this sale (according to the Debtor, the real estate is worth \$4,305,000.00 before this sale, \$3,705,000.00 after the sale.
 - b. In addition, Bank Forward has perfected security interests in all the Debtors livestock, crops, several titled vehicles, machinery, and equipment. Prior to this sale, the total value, including real estate exceeds \$7.7M, leaving an equity position before SBA (2nd on Machinery/Equipment, etc.) of over \$4 Million Dollars. *See* Liquidation Analysis filed with Schedule A/B, attached as Exhibit 1.
11. Bank Forward has argued in its Motion to Lift Automatic Stay [Docket #19], that the real estate is not property of estate due to the execution of an agreement wherein the Debtor provided Warranty Deeds held in escrow contingent on refinancing with another lending institution.
 - a. Debtor will address his objections to this argument in its Objection to the Motion for Relief on or before the objection deadline of July 21, 2023.
 - b. Notwithstanding this argument, this sale, based on the above, is obviously a sale that greatly benefits Bank Forward and should be authorized by the Court.

WHEREFORE, the Debtor respectfully requests an order:

1. Approving the sale of real property as outlined in this Motion; and
2. Allowing the Debtor, Bank Forward, and the buyer, Jessica Carlson, to execute the documents necessary to close the sale of the Property; and
3. Requiring Bank Forward to deliver the abstracts necessary to close the sale to the closing agent for FSA as soon as immediately possible; and
4. Any other relief the Court deems necessary and appropriate in the circumstances.

Dated: July 21, 2023

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